

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR 7273**

4 COMPLAINT FILED: Sept. 1, 2017

5 NOTIFICATION DATE: Sept. 7, 2017

6 LAST RESPONSE FILED: Nov. 1, 2017

7 ACTIVATION DATE: Dec. 27, 2017

8
9 STATUTE OF LIMITATIONS: July 12, 2022

10 ELECTION CYCLE: 2018

11 **COMPLAINANTS:**

Common Cause

12 Paul S. Ryan

13 **RESPONDENTS:**

Robert James Ritchie a/k/a "Kid Rock"

14 Warner Bros Records, Inc.

15 **RELEVANT AUTHORITY:**

52 U.S.C. § 30101(2)

16 52 U.S.C. §§ 30102, 30103, 30104

17 52 U.S.C. § 30118(a)

18 11 C.F.R. § 110.6

19 11 C.F.R. § 114.2(f)

20 11 C.F.R. § 100.22

21 11 C.F.R. §§ 100.72(a), (b)

22 11 C.F.R. §§ 100.131(a), (b)

23 **INTERNAL REPORTS CHECKED:**

None

24 **FEDERAL AGENCIES CHECKED:**

None

25 **I. INTRODUCTION**

26 Robert J. Ritchie, a recording artist known by his stage name, "Kid Rock," issued tweets
27 and an online public statement indicating that he was considering running for federal office, and
28 created the website "kidrockforsenate.com" which promoted merchandise bearing the logo, "Kid
29 Rock for US Senate," produced and sold by his merchandising company, Warner Brothers
30 Records, Inc. ("WBR"). Complainants allege that based on these actions, Ritchie became a
31 federal candidate and violated the law when he failed to abide by the relevant registration and

1 reporting requirements, contribution limits, and source prohibitions. Complainants further allege
2 that WBR made, facilitated, or acted as a conduit for contributions to a federal candidate.
3 Ritchie claims that he had never decided to run for federal office, and that his activity did not
4 result in any contributions or expenditures because it was commercial and artistic activity, not
5 activity for the purpose of influencing a federal election.

6 Because Ritchie authorized the distribution of merchandise unequivocally referring to
7 himself as a federal candidate, his activity does not fall within the exemption afforded to
8 individuals who are only "testing the waters" of a potential candidacy. Further, by contracting
9 with WBR to produce merchandise expressly advocating for his election to federal office,
10 Ritchie engaged in activity that was at least nominally for the purpose of influencing a federal
11 election, and he therefore made or authorized WBR to make expenditures, which likely exceeded
12 the \$5,000 statutory threshold for candidate status. As such, we recommend that the
13 Commission find reason to believe that Ritchie violated 52 U.S.C. §§ 30102, 30103, and 30104,
14 and authorize an investigation. In addition, because WBR appears to have been acting as a
15 commercial vendor, we recommend that the Commission find no reason to believe that WBR
16 violated the law as alleged.

17 **II. FACTUAL BACKGROUND**

18 According to the Complaint, in February 2017, a member of the Michigan Republican
19 Party's central committee suggested that "Kid Rock" a/k/a Robert J. Ritchie, a Michigan native,
20 would generate a lot of excitement and might be a viable Republican Party candidate for the U.S.
21 Senate in Michigan during the 2018 election.¹ The Complaint claims that Ritchie launched the

¹ Compl. at 2 (Sept. 1, 2017); *see* Paul Egan, "Kid Rock for U.S. Senate? Unlikely candidate is favored by a GOP official," DETROIT FREE PRESS (Feb. 11, 2017) (cited in Complaint).

1 website "kidrockforsenate.com" in early July 2017, and Ritchie acknowledges that he created
2 and paid for the site.² In a Twitter post on July 12, 2017, Ritchie wrote³ "I have had a ton of
3 emails and texts asking me if this website is real . . . kidrockforsenate.com[.] The answer is an
4 absolute YES."⁴ The post was accompanied by a picture of a yard sign reading "KID ROCK
5 FOR US SENATE" as a stylized logo. Immediately after, Ritchie tweeted "Stay tuned, I will
6 have a major announcement in the near future – Kid Rock."⁵ On July 17, 2017, he tweeted
7 "kidrockforsenate.com" with an image bearing the following text in all caps: "I believe if you
8 work your butt off and pay taxes, you should be able to easily understand and navigate the laws,
9 tax codes, health care and anything else the government puts in place that affects us all." The
10 text was followed by a logo reading "KID ROCK '18 FOR US SENATE."⁶ The next day, July
11 18, 2017, Ritchie tweeted "kidrockforsenate.com" along with an image bearing the text "KID
12 ROCK FOR US SENATE" and images of a yard sign, bumper sticker, t-shirt, and cap all bearing
13 the "Kid Rock for US Senate" logo, and the text at the bottom, "SHOP NOW."⁷

14 On July 24, 2017, Kid Rock retweeted a link to an article on "thegatewaypundit.com"
15 with the headline "BOOM! Kid Rock LEADS in Michigan Senate Race Poll."⁸ On July 26,
16 2017, Kid Rock tweeted "When my name was thrown out there for US Senate[.] I decided to

² Compl. at 2; Resp. of Robert J. Ritchie, Ex. 1 ¶ 6 (Nov. 3, 2017) ("Ritchie Resp.").

³ Posts from the verified Twitter handle @KidRock are attributed to Ritchie, as are all public statements Ritchie made under his stage name, Kid Rock.

⁴ Compl., Ex. 1.

⁵ *Id.*, Ex. 2.

⁶ *Id.*, Ex. 3.

⁷ *Id.*, Ex. 4.

⁸ *Id.*, Ex. 5.

1 launch kidrockforsenate.com.... Read more: goo.gl/xXPQd5” accompanied by an image logo for
2 “KID ROCK ’18 FOR US SENATE.”⁹ The link in this tweet sent viewers to the webpage
3 “kidrock.com,” which presented a lengthy statement attributed to Ritchie; the same statement
4 also appeared on kidrockforsenate.com.¹⁰ In the statement, Ritchie acknowledged that he had
5 “decided to take a hard look to see if there was real support for me as a candidate and my
6 message” and indicated that “my first order of business is to get people engaged and registered to
7 vote while continuing to put out my ideas on ways to help working class people[.]” Ritchie also
8 claimed that “while exploring my candidacy for US Senate” he would be creating a 501(c)(4)
9 nonprofit organization to promote voter registration. Referring to media speculation that “this
10 was a ploy to sell shirts or promote something,” Ritchie responded, “I have no problem selling
11 Kid Rock shirts and yes, I absolutely will use this media circus to sell/promote whatever I damn
12 well please[.]” He also offered, however, that “either way, money raised at this time through the
13 sale of merchandise associated with this very possible campaign will go towards our ‘register to
14 vote’ efforts.”¹¹ At the conclusion of the statement, Ritchie remarked “if I decide to throw my
15 hat in the ring for US Senate, believe me... it’s game on[.]”¹²

16 When the Complaint was filed, the website “kidrockforsenate.com” featured the logo
17 “Kid Rock ’18 for US Senate.” A link at the very top of the page “kidrockforsenate.com” read

⁹ *Id.*, Ex. 6.

¹⁰ *Id.* at 5.

¹¹ *Id.*

¹² *Id.* The Complaint also alleges that the Twitter account “@KidRockSenator” is “associated with” kidrockforsenate.com and has been promoting the merchandise available on that website. Compl., Ex. 7. Twitter user @KidRockSenator tweeted on July 29, 2017, “Donate to the campaign! Get your gear! #PoliticsNation” with the accompanying image of Kid Rock for Senate merchandise. Ritchie, however, denies that @KidRockSenator is one of his Twitter handles and claims that it “is not authorized by him, Kid Rock, or his management company.” Ritchie Resp. at 10; *see id.*, Ex. 1 ¶ 6. It is unknown who owns the Twitter handle “@KidRockSenator.”

1 "KID ROCK ANNOUNCEMENT ON KIDROCK.COM" and sent viewers to
2 "https://kidrock.com/sweetsouthernsugar" the website for Kid Rock's album "Sweet Southern
3 Sugar," which was released on November 3, 2017, and its accompanying U.S. tour. The page
4 kidrockforsenate.com also featured a "BUY NOW" button that sent viewers to a different
5 website, "http://kidrock.warnerbrosrecords.com/senate.html." That site, which appears to be
6 operated by WBR, offered merchandise for sale bearing a logo reading either "Kid Rock for US
7 Senate" or "Kid Rock '18 for US Senate." Under each item, the site provided a disclaimer: "All
8 proceeds go to voter registration efforts. This is not a political contribution."¹³

9 According to WBR, its Kid Rock-branded merchandise, including the "Kid Rock for US
10 Senate" line of items, is produced "in close collaboration with Mr. Ritchie."¹⁴ WBR avers that
11 on February 27, 2017, Ritchie requested that WBR create the "Kid Rock for Senate"
12 merchandise, and he later approved the design.¹⁵ However, WBR claims that the merchandise
13 was produced, marketed, and sold under the terms of a standard merchandising agreement
14 between WBR and one of its artists, and at the usual and normal rates for such products.¹⁶ The
15 merchandise went on sale on July 11, 2017, the day before Ritchie's first tweet promoting
16 kidrockforsenate.com.¹⁷ WBR claims that Ritchie requested that his share of the sale proceeds
17 be designated to a 501(c)(4) organization supporting voter registration efforts, and that WBR

¹³ Ritchie Resp., Ex. 6.

¹⁴ Resp. of WBR at 2 (Oct. 30, 2017) ("WBR Resp.").

¹⁵ WBR Resp., Ex. A ¶ 12.

¹⁶ WBR Resp. at 2-3; *id.*, Ex. A ¶ 14.

¹⁷ WBR Resp., Ex. A ¶¶ 13, 15.

1 “has not remitted and does not intend to remit any payments from the sale of Kid Rock for
2 Senate merchandise to any political candidate or committee.”¹⁸

3 On October 24, 2017, Ritchie announced that he would not run for the U.S. Senate.¹⁹
4 Ritchie claimed that he told people in his circle who were “in on the joke” that “we’re not doing
5 it[,] but let’s roll with it for a while.”²⁰ That same day, the statement discussing Kid Rock’s
6 potential campaign was removed from kidrockforsenate.com.²¹ After announcing that he was
7 not running for office, Ritchie requested that his merchandising agreement be amended so that
8 WBR would remit his share of “Kid Rock for US Senate” merchandise sale proceeds to him.²²

9 III. FACTUAL AND LEGAL ANALYSIS

10 A. Ritchie Became a Federal Candidate by Directing WBR to Produce and Sell 11 Express Advocacy Materials Supporting His Federal Candidacy

12 1. Ritchie’s Activity Went Beyond “Testing the Waters”

13 Ritchie’s activities do not fall within the Commission’s exemptions for individuals
14 merely “testing the waters” of a potential candidacy. The Federal Election Campaign Act of
15 1971, as amended (the “Act”), defines a “candidate” as “an individual who seeks nomination for
16 election, or election, to Federal office,” and an individual is deemed to seek nomination for
17 election, or election, if he or she has received or made, or has authorized another person to
18 receive or make, aggregate contributions or expenditures exceeding \$5,000.²³ Under the Act, a

¹⁸ WBR Resp., Ex. A ¶ 21.

¹⁹ Ritchie Resp. at 5; *id.*, Ex. 1 ¶ 12.

²⁰ Brian McCollum, “Kid Rock: No, I’m Not Running for U.S. Senate,” DETROIT FREE PRESS (Oct. 24, 2017).

²¹ WBR Resp., Ex. A ¶ 20.

²² *Id.*, Ex. A ¶ 21.

²³ 52 U.S.C. § 30101(2).

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1 contribution is "any gift, subscription, loan, advance, or deposit of money or anything of value
2 made by any person for the purpose of influencing any election for Federal office[.]" and an
3 expenditure is "any purchase, payment, distribution, loan, advance, deposit, or gift of money or
4 anything of value, made by any person for the purpose of influencing any election for Federal
5 office."²⁴ Notwithstanding these provisions, the Commission's "testing the waters" regulations
6 provide that funds received, or payments made, "solely for the purpose of determining whether
7 an individual should become a candidate" are not contributions or expenditures, respectively.²⁵
8 The "testing the waters" regulations, however, do not apply to "activities indicating that an
9 individual has decided to become a candidate for a particular office or for activities relevant to
10 conducting a campaign[.]"²⁶ such as where an "individual makes or authorizes written or oral
11 statements that refer to him or her as a candidate for a particular office."²⁷

12 When Ritchie coordinated with WBR to sell merchandise referring to himself as a federal
13 candidate, he objectively demonstrated that he had decided to become a candidate for a particular
14 federal office and was engaging in activity relevant to conducting a campaign. While Ritchie's
15 public statements at the time indicated that he was only considering running for office, and he
16 now claims that he never intended to become a candidate, by directing WBR to sell "Kid Rock
17 for US Senate" merchandise, Ritchie authorized written statements that referred to himself as a
18 candidate for a particular office.²⁸ Moreover, Ritchie's activity was also relevant to conducting a

²⁴ 52 U.S.C. §§ 30101(8)(A)(i), (9)(A)(i).

²⁵ 11 C.F.R. §§ 100.72(a), 100.131(a).

²⁶ 11 C.F.R. §§ 100.72(b), 100.131(b).

²⁷ 11 C.F.R. §§ 100.72(b)(3), 100.131(b)(3).

²⁸ 11 C.F.R. §§ 100.72(b)(3), 100.131(b)(3). In MUR 6957, the Commission found that an individual became a candidate by creating a campaign website bearing the logo "Isadore Hall for Congress," shortly after making a

1 campaign, even if it was not specifically intended to raise funds for the campaign. In short,
2 Ritchie's actions objectively evinced that he had decided to become a candidate, irrespective of
3 his subjective intentions.²⁹ As such, all of the funds spent to produce and sell "Kid Rock for US
4 Senate" merchandise were expenditures, not "testing the waters" activity.

5 **2. Ritchie's Activity Was Not Bona Fide Commercial Activity Because it**
6 **Was at Least Partly for the Purpose of Influencing a Federal Election**

7 By directing WBR to produce and sell merchandise expressly advocating for his election
8 to federal office, Ritchie went beyond the range of purely commercial activity that the
9 Commission has determined does not constitute a contribution or expenditure under the Act
10 because it is not "for the purpose of influencing any election for Federal office."³⁰

11 Ritchie contends that he created the "Kid Rock for US Senate" merchandise, and claimed
12 to be considering a potential candidacy, for commercial and artistic reasons; he essentially claims
13 that he was promoting his brand and his music by tapping into an increased public interest in
14 politics.³¹ However, even if Ritchie's conduct was partly driven by commercial and artistic
15 considerations, the available information demonstrates that it also served a political function,
16 because the merchandise that Ritchie approved featured a slogan, "Kid Rock for US Senate,"

public statement expressing his intention to run for federal office. *See* Factual and Legal Analysis at 4-5, MUR 6957 (Isadore Hall).

²⁹ *See* Advisory Op. 2015-09 at 6 (Senate Majority PAC) ("Where the circumstances demonstrate that an individual's statement regarding candidacy reflects that individual's decision to run for office, mere assertions that the individual's subjective intent differs from his or her statement generally will not negate the objective indication of candidacy arising from the statement.").

³⁰ *See* Advisory Op. 2014-06 (Ryan); Advisory Op. 1994-30 (Conservative Concepts).

³¹ *See* Ritchie Resp., Ex. 1 ¶ 2 ("I have never seen the country as politically agitated as it is today. I wanted to reach that audience[.]"); *id.*, ¶ 8 ("The shirts and signs are just one way to draw attention to me, help advertise my concerts, and frankly to give my fans a new way to have a little fun.").

1 expressly advocating for Ritchie's election to federal office.³² Ritchie then issued tweets, as well
2 as a longer-form statement featured on the websites kidrock.com and kidrockforsenate.com, to
3 generate interest in his potential candidacy and the "Kid Rock for US Senate" merchandise.
4 Although Ritchie now claims that he never seriously intended to run for office and was merely
5 promoting his artistic persona and generating interest in his upcoming album, in July 2017, he
6 was by his own words seriously exploring a potential candidacy. By selling shirts, caps, and
7 yard signs that explicitly referred to him as a candidate, Ritchie's conduct appears to have been
8 at least partly for the purpose of influencing a federal election.

9 Ritchie's conduct thus fails to satisfy the Commission's four-factor test for bona fide
10 commercial activity, because when he, as the named candidate, distributed merchandise
11 expressly advocating for his candidacy, that conduct was inconsistent with activity engaged in
12 "for genuinely commercial purposes."³³ The Commission has cautioned that the commercial
13 activity exemption may not apply where a candidate is involved in the commercial enterprise.
14 Advisory Opinion 1994-30 (Conservative Concepts) concerned a company selling merchandise
15 that contained express advocacy for profit. Because no candidate was involved in the venture
16 and none of the sale proceeds went to any political committee, the Commission determined that
17 the company was engaged in genuinely commercial activity, and that its conduct therefore did

³² See 11 C.F.R. § 100.22 (defining express advocacy). Ritchie argues that "Kid Rock" is a fictional character and the slogan "Kid Rock for US Senate" therefore "fails to identify any actual person or individual who can run for office." Ritchie Resp. at 8. However, "Kid Rock" is Ritchie's stage name and the statement "Kid Rock for US Senate" expressly advocates for the election of the person publicly identifiable as Kid Rock, Robert Ritchie.

³³ Advisory Op. 1994-30 at 4 (Conservative Concepts). The four factors used to evaluate when activity that might otherwise constitute a contribution or expenditure would be exempted as bona fide commercial activity are (1) whether the sales involve fundraising activity or solicitations for political contributions; (2) whether the activity is engaged in for genuinely commercial purposes; (3) whether the items are sold at the usual and normal charge; and (4) whether the purchases are made by individuals for their personal use in political expression. *Id.*

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1 not result in contributions or expenditures to any candidate or committee.³⁴ Crucially, however,
2 the Commission noted that the same activity might not be considered commercial, and could
3 result in the company making contributions or expenditures to a candidate, if it was coordinated
4 with that candidate.³⁵

5 When Ritchie directed WBR to produce "Kid Rock for US Senate" merchandise and
6 personally approved the designs for the items, he coordinated with WBR to sell merchandise
7 containing express advocacy messages supporting his candidacy. The available information
8 therefore indicates that all payments to produce and market the merchandise were at least partly
9 for the purpose of influencing a federal election and not for purely commercial purposes. As
10 such, those payments were expenditures under the Act, and Ritchie was required to register as a
11 candidate and report them once they exceeded the \$5,000 statutory threshold.

12 **3. Ritchie Made or Authorized Expenditures Most Likely in Excess of**
13 **the Statutory Threshold for Federal Candidacy**

14 Because the funds used to produce and sell "Kid Rock for US Senate" merchandise were
15 expenditures, and those expenditures most likely exceeded \$5,000 in the aggregate, the available
16 facts support a reasonable inference that Ritchie crossed the statutory threshold for candidate
17 status and was therefore required to register and report as a candidate. While the available
18 record does not indicate how much WBR spent to produce and market the merchandise expressly
19 advocating for Ritchie's election to federal office, the merchandise was offered for sale on or

³⁴ Advisory Op. 1994-30 at 5-7.

³⁵ *Id.* at 8 ("[T]he Commission expressly notes that this conclusion is predicated on the representations that you have made that your activities are for purely commercial purpose and are *not coordinated* with any candidate.") (emphasis added); see First Gen. Counsel's Report at 15, MURs 5474 and 5539 (Dog Eat Dog) ("There is also no information that the production or release of the film was coordinated with any candidate or political committee[.]"); see also Advisory Op. 1976-50 (Friends of Dick Lugar).

1 about July 11, 2017, was still being sold when Ritchie announced that he would not run for
2 office on October 24, 2017, and continues to be offered on WBR's website. As such, there is
3 sufficient circumstantial evidence at this stage to infer that the amount spent to produce "Kid
4 Rock for US Senate" merchandise was in excess of the \$5,000 statutory threshold.

5 Because Ritchie made or authorized sufficient expenditures to become a candidate, it is
6 immaterial that he directed his share of the proceeds from "Kid Rock for US Senate"
7 merchandise sales to a 501(c)(4) nonprofit organization.³⁶ Ritchie requested that his share of the
8 sale proceeds be donated to support voter registration efforts, posted a statement to that effect on
9 his website, kidrockforsenate.com, and asked WBR to post a disclaimer to that effect on its
10 website where the items were sold.³⁷ As such, potential purchasers were reasonably on notice
11 that sale proceeds would be used to support a social welfare cause and would not be used to
12 support Ritchie's potential campaign for federal office. Because purchasers' funds were
13 therefore not available for the purpose of influencing a federal election, they were not
14 "contributions" to Ritchie under the Act.³⁸

³⁶ See Ritchie Resp., Ex. 8 (WBR Merchandising Agreement) ("At your and Kid Rock's hereby irrevocably issued direction and authorization, [WBR] hereby agrees to issue to the order of/pay directly to the 501(c)(4) organization CRNC Action ("CRNC Action"), instead of to you or Kid Rock, all Merchandise Net Profits and any other moneys due to you or Kid Rock . . . that are derived from sales of Kid Rock for Senate Merchandise under the Merchandising Agreement occurring during the period July 1, 2017 through October 31, 2017."). After declaring that he would not run for the U.S. Senate, Ritchie asked that the merchandising agreement be amended so that future proceeds from the sale of "Kid Rock for US Senate" merchandise be remitted to him personally. WBR Resp. at 4.

³⁷ Ritchie Resp. at 3-4; *id.*, Ex. 5; WBR Resp., Ex. A ¶ 19.

³⁸ The Complaint alleges that the full purchase price of all "Kid Rock for US Senate" merchandise is a contribution, relying on 11 C.F.R. § 100.53, *see* Compl. at 15, but that rule is inapposite here. The rule indicates that "the entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution." The items at issue in this matter clearly were not "sold by a political committee," and we can find no prior instance where this rule has been applied to items not sold by a political committee. In addition, the website where the items were offered specifically alerted potential purchasers that "all [sale] proceeds [will] go to voter registration efforts," Ritchie Resp. at 4, indicating that the items were not being sold to raise funds for any political committee or candidate, or as "an inducement" to make a political contribution. *See* Advisory Op. 1975-15 at 1 (Wallace) ("[W]hen the Campaign sells the described items, it is engaging in an activity to raise funds and to build support for the candidate. As a general matter, a person who transmits money to a political committee or candidate

1 Nevertheless, as discussed above, the funds that Ritchie spent or authorized to produce
2 and sell materials containing express advocacy were sufficient to require him to register and
3 report as a federal candidate. Ritchie did not do so, and we therefore recommend that the
4 Commission find reason to believe that Ritchie violated 52 U.S.C. §§ 30102, 30103, 30104.

5 **B. WBR Acted as a Commercial Vendor and Therefore Did Not Make,**
6 **Facilitate, or Serve as a Conduit For Any Contribution to Ritchie**

7 The available information supports the inference that WBR was acting as a commercial
8 vendor when it produced and sold "Kid Rock for US Senate" merchandise, and WBR therefore
9 did not make, facilitate, or act as a conduit for contributions to Ritchie. Under the Act, a
10 contribution includes "anything of value," which in turn includes all in-kind contributions, such
11 as "the provision of any goods or services without charge or at a charge that is less than the usual
12 and normal charge for such goods or services."³⁹ By implication, goods or services provided at
13 the usual and normal charge do not constitute "anything of value" under the Act.⁴⁰ Commission
14 regulations also provide that a corporation does not facilitate a contribution by providing goods
15 or services to a candidate or political committee in the ordinary course of its business as a
16 commercial vendor.⁴¹ In addition, corporations cannot make contributions to candidates or serve

— any portion of which is available to be spent for the purpose of influencing a Federal election — has made a contribution in the full amount of the funds so transmitted. . . . The fact that the contributor obtains an item of intrinsic value does not remove the transaction from this definition of contribution. The items offered by the Campaigns are an inducement to the contributor to give money the same as a dinner or other social event held for the purpose of fundraising.").

³⁹ 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8).

⁴⁰ *See* 11 C.F.R. § 100.52(d)(2) (defining "usual and normal charge" for goods as "the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution [and, for services,] the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.").

⁴¹ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining "commercial vendor" as "any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services); *see also* Advisory Op. 2007-04 at 3 (Atlatl, Inc.).

1 as conduits for earmarked contributions, which are contributions directed to a clearly identified
2 federal candidate through an intermediary.⁴²

3 Ritchie and WBR have a long-standing merchandising relationship, and Ritchie directed
4 WBR to produce and sell "Kid Rock for US Senate" merchandise, which WBR claims it did
5 under the terms of a standard merchandising agreement with one of its artists, at the usual and
6 normal rate for such services. Nothing in the available record suggests that WBR provided any
7 special discounts or terms for the "Kid Rock for US Senate" merchandise, and WBR specifically
8 denies that it provided any. As explained above, moreover, purchases of "Kid Rock for US
9 Senate" merchandise did not qualify as "contributions" under the Act.⁴³ The available
10 information also provides no support for the allegation that WBR received or transmitted any
11 contributions earmarked for Ritchie. As such, there is insufficient factual support for the
12 allegation that WBR made, facilitated, or served as a conduit for any contributions to Ritchie.
13 We therefore recommend that the Commission find no reason to believe WBR violated
14 52 U.S.C. § 30118(a) and 11 C.F.R. §§ 110.6, 114.2(f).

15 **IV. PROPOSED INVESTIGATION**

16 Our proposed investigation would seek information regarding how much Ritchie or WBR
17 spent to produce and sell the "Kid Rock for US Senate" merchandise at issue in this matter, as
18 well as any information regarding contributions received or expenditures made by Ritchie. This
19 information would substantiate Ritchie's alleged violation of the Act's registration and reporting
20 requirements, and would clarify whether Ritchie failed to report any other financial activity

⁴² 11 C.F.R. § 110.6(a), (b); *see* 52 U.S.C. § 30118(a).

⁴³ *See supra* note 38 and related text.

related to his candidacy. We would attempt to obtain this information voluntarily, but we recommend that the Commission approve the use of compulsory process.

V. RECOMMENDATIONS

1. Find reason to believe that Robert James Ritchie a/k/a "Kid Rock" violated 52 U.S.C. §§ 30102, 30103, 30104;
2. Find no reason to believe that Warner Brothers Records, Inc. violated 52 U.S.C. § 30118(a) and 11 C.F.R. §§ 110.6, 114.2(f);
3. Approve the attached Factual and Legal Analyses;
4. Close the file as to Warner Brothers Records, Inc.;
5. Authorize the use of compulsory process; and
6. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

July 9, 2018
Date

Kathleen M. Guith
Kathleen M. Guith
Associate General Counsel for Enforcement

Mark Shonkwiler
Mark Shonkwiler
Assistant General Counsel

Saurav Ghosh
Saurav Ghosh
Attorney

Attachments:

- Factual and Legal Analysis – Robert James Ritchie a/k/a "Kid Rock"
- Factual and Legal Analysis – Warner Brothers Records, Inc.

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Robert J. Ritchie a/k/a "Kid Rock" MUR 7273
4

5 **I. INTRODUCTION**

6 This matter was generated by a complaint filed with the Federal Election Commission
7 ("Commission") by Common Cause and Paul S. Ryan. *See* 52 U.S.C. § 30109(a)(1). Robert J.
8 Ritchie, a recording artist known by his stage name, "Kid Rock," issued tweets and an online
9 public statement indicating that he was considering running for federal office, and created the
10 website "kidrockforsenate.com" which promoted merchandise bearing the logo, "Kid Rock for
11 US Senate," produced and sold by his merchandising company, Warner Brothers Records, Inc.
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18 Because Ritchie authorized the distribution of merchandise unequivocally referring to
19 himself as a federal candidate, his activity does not fall within the exemption afforded to
20 individuals who are only "testing the waters" of a potential candidacy. Further, by contracting
21 with WBR to produce merchandise expressly advocating for his election to federal office,
22 Ritchie engaged in activity that was at least nominally for the purpose of influencing a federal
23 election, and he therefore made or authorized WBR to make expenditures, which likely exceeded

1 the \$5,000 statutory threshold for candidate status. As such, the Commission finds reason to
2 believe that Ritchie violated 52 U.S.C. §§ 30102, 30103, and 30104.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Background**

5 According to the Complaint, in February 2017, a member of the Michigan Republican
6 Party's central committee suggested that "Kid Rock" a/k/a Robert J. Ritchie, a Michigan native,
7 would generate a lot of excitement and might be a viable Republican Party candidate for the U.S.
8 Senate in Michigan during the 2018 election.¹ The Complaint claims that Ritchie launched the
9 website "kidrockforsenate.com" in early July 2017, and Ritchie acknowledges that he created
10 and paid for the site.² In a Twitter post on July 12, 2017, Ritchie wrote³ "I have had a ton of
11 emails and texts asking me if this website is real . . . kidrockforsenate.com[.] The answer is an
12 absolute YES."⁴ The post was accompanied by a picture of a yard sign reading "KID ROCK
13 FOR US SENATE" as a stylized logo. Immediately after, Ritchie tweeted "Stay tuned, I will
14 have a major announcement in the near future – Kid Rock."⁵ On July 17, 2017, he tweeted
15 "kidrockforsenate.com" with an image bearing the following text in all caps: "I believe if you
16 work your butt off and pay taxes, you should be able to easily understand and navigate the laws,
17 tax codes, health care and anything else the government puts in place that affects us all." The

¹ Compl. at 2 (Sept. 1, 2017); *see* Paul Egan, "Kid Rock for U.S. Senate? Unlikely candidate is favored by a GOP official," DETROIT FREE PRESS (Feb. 11, 2017) (cited in Complaint).

² Compl. at 2; Resp. of Robert J. Ritchie, Ex. 1 ¶ 6 (Nov. 3, 2017) ("Ritchie Resp.").

³ Posts from the verified Twitter handle @KidRock are attributed to Ritchie, as are all public statements Ritchie made under his stage name, Kid Rock.

⁴ Compl., Ex. 1.

⁵ *Id.*, Ex. 2.

1 text was followed by a logo reading "KID ROCK '18 FOR US SENATE."⁶ The next day, July
2 18, 2017, Ritchie tweeted "kidrockforsenate.com" along with an image bearing the text "KID
3 ROCK FOR US SENATE" and images of a yard sign, bumper sticker, t-shirt, and cap all bearing
4 the "Kid Rock for US Senate" logo, and the text at the bottom, "SHOP NOW."⁷

5 On July 24, 2017, Kid Rock retweeted a link to an article on "thegatewaypundit.com"
6 with the headline "BOOM! Kid Rock LEADS in Michigan Senate Race Poll."⁸ On July 26,
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14 vote while continuing to put out my ideas on ways to help working class people[.]" Ritchie also
15 claimed that "while exploring my candidacy for US Senate" he would be creating a 501(c)(4)
16 nonprofit organization to promote voter registration. Referring to media speculation that "this
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19 well please[.]" He also offered, however, that "either way, money raised at this time through the

⁶ *Id.*, Ex. 3.

⁷ *Id.*, Ex. 4.

⁸ *Id.*, Ex. 5.

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¹⁰ *Id.* at 5.

1 sale of merchandise associated with this very possible campaign will go towards our 'register to
2 vote' efforts."¹¹ At the conclusion of the statement, Ritchie remarked "if I decide to throw my
3 hat in the ring for US Senate, believe me... it's game on[.]"¹²

4 When the Complaint was filed, the website "kidrockforsenate.com" featured the logo
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12 Senate" or "Kid Rock '18 for US Senate." Under each item, the site provided a disclaimer: "All
13 proceeds go to voter registration efforts. This is not a political contribution."¹³

14 According to WBR, its Kid Rock-branded merchandise, including the "Kid Rock for US
15 Senate" line of items, is produced "in close collaboration with Mr. Ritchie."¹⁴ WBR avers that
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¹¹ *Id.*

¹² *Id.* The Complaint also alleges that the Twitter account "@KidRockSenator" is "associated with" kidrockforsenate.com and has been promoting the merchandise available on that website. Compl., Ex. 7. Twitter user @KidRockSenator tweeted on July 29, 2017, "Donate to the campaign! Get your gear! #PoliticsNation" with the accompanying image of Kid Rock for Senate merchandise. Ritchie, however, denies that @KidRockSenator is one of his Twitter handles and claims that it "is not authorized by him, Kid Rock, or his management company." Ritchie Resp. at 10; *see id.*, Ex. 1 ¶ 6. It is unknown who owns the Twitter handle "@KidRockSenator."

¹³ Ritchie Resp., Ex. 6.

¹⁴ Resp. of WBR at 2 (Oct. 30, 2017) ("WBR Resp.").

1 merchandise, and he later approved the design.¹⁵ However, WBR claims that the merchandise
2 was produced, marketed, and sold under the terms of a standard merchandising agreement
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7 "has not remitted and does not intend to remit any payments from the sale of Kid Rock for
8 Senate merchandise to any political candidate or committee."¹⁸

9 On October 24, 2017, Ritchie announced that he would not run for the U.S. Senate.¹⁹
10 Ritchie claimed that he told people in his circle who were "in on the joke" that "we're not doing
11 it[,] but let's roll with it for a while."²⁰ That same day, the statement discussing Kid Rock's
12 potential campaign was removed from kidrockforsenate.com.²¹ After announcing that he was
13 not running for office, Ritchie requested that his merchandising agreement be amended so that
14 WBR would remit his share of "Kid Rock for US Senate" merchandise sale proceeds to him.²²

¹⁵ WBR Resp., Ex. A ¶ 12.

¹⁶ WBR Resp. at 2-3; *id.*, Ex. A ¶ 14.

¹⁷ WBR Resp., Ex. A ¶¶ 13, 15.

¹⁸ WBR Resp., Ex. A ¶ 21.

¹⁹ Ritchie Resp. at 5; *id.*, Ex. 1 ¶ 12.

²⁰ Brian McCollum, "Kid Rock: No, I'm Not Running for U.S. Senate," DETROIT FREE PRESS (Oct. 24, 2017).

²¹ WBR Resp., Ex. A ¶ 20.

²² *Id.*, Ex. A ¶ 21.

B. Ritchie Became a Federal Candidate by Directing WBR to Produce and Sell Express Advocacy Materials Supporting His Federal Candidacy

1. Ritchie's Activity Went Beyond "Testing the Waters"

Ritchie's activities do not fall within the Commission's exemptions for individuals merely "testing the waters" of a potential candidacy. The Federal Election Campaign Act of 1971, as amended (the "Act"), defines a "candidate" as "an individual who seeks nomination for election, or election, to Federal office," and an individual is deemed to seek nomination for election, or election, if he or she has received or made, or has authorized another person to receive or make, aggregate contributions or expenditures exceeding \$5,000.²³ Under the Act, a contribution is "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office[.]" and an expenditure is "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office."²⁴ Notwithstanding these provisions, the Commission's "testing the waters" regulations provide that funds received, or payments made, "solely for the purpose of determining whether an individual should become a candidate" are not contributions or expenditures, respectively.²⁵ The "testing the waters" regulations, however, do not apply to "activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to

²³ 52 U.S.C. § 30101(2).

²⁴ 52 U.S.C. §§ 30101(8)(A)(i), (9)(A)(i).

²⁵ 11 C.F.R. §§ 100.72(a), 100.131(a).

1 conducting a campaign[,]"²⁶ such as where an "individual makes or authorizes written or oral
2 statements that refer to him or her as a candidate for a particular office."²⁷

3 When Ritchie coordinated with WBR to sell merchandise referring to himself as a federal
4 candidate, he objectively demonstrated that he had decided to become a candidate for a particular
5 federal office and was engaging in activity relevant to conducting a campaign. While Ritchie's
6 public statements at the time indicated that he was only considering running for office, and he
7 now claims that he never intended to become a candidate, by directing WBR to sell "Kid Rock
8 for US Senate" merchandise, Ritchie authorized written statements that referred to himself as a
9 candidate for a particular office.²⁸ Moreover, Ritchie's activity was also relevant to conducting a
10 campaign, even if it was not specifically intended to raise funds for the campaign. In short,
11 Ritchie's actions objectively evinced that he had decided to become a candidate, irrespective of
12 his subjective intentions.²⁹ As such, all of the funds spent to produce and sell "Kid Rock for US
13 Senate" merchandise were expenditures, not "testing the waters" activity.

14 **2. Ritchie's Activity Was Not Bona Fide Commercial Activity Because it**
15 **Was at Least Partly for the Purpose of Influencing a Federal Election**

16 By directing WBR to produce and sell merchandise expressly advocating for his election
17 to federal office, Ritchie went beyond the range of purely commercial activity that the

²⁶ 11 C.F.R. §§ 100.72(b), 100.131(b).

²⁷ 11 C.F.R. §§ 100.72(b)(3), 100.131(b)(3).

²⁸ 11 C.F.R. §§ 100.72(b)(3), 100.131(b)(3). In MUR 6957, the Commission found that an individual became a candidate by creating a campaign website bearing the logo "Isadore Hall for Congress," shortly after making a public statement expressing his intention to run for federal office. *See* Factual and Legal Analysis at 4-5, MUR 6957 (Isadore Hall).

²⁹ *See* Advisory Op. 2015-09 at 6 (Senate Majority PAC) ("Where the circumstances demonstrate that an individual's statement regarding candidacy reflects that individual's decision to run for office, mere assertions that the individual's subjective intent differs from his or her statement generally will not negate the objective indication of candidacy arising from the statement.").

1 Commission has determined does not constitute a contribution or expenditure under the Act
2 because it is not "for the purpose of influencing any election for Federal office."³⁰

3 Ritchie contends that he created the "Kid Rock for US Senate" merchandise, and claimed
4 to be considering a potential candidacy, for commercial and artistic reasons; he essentially claims
5 that he was promoting his brand and his music by tapping into an increased public interest in
6 politics.³¹ However, even if Ritchie's conduct was partly driven by commercial and artistic
7 considerations, the available information demonstrates that it also served a political function,
8 because the merchandise that Ritchie approved featured a slogan, "Kid Rock for US Senate,"
9 expressly advocating for Ritchie's election to federal office.³² Ritchie then issued tweets, as well
10 as a longer-form statement featured on the websites kidrock.com and kidrockforsenate.com, to
11 generate interest in his potential candidacy and the "Kid Rock for US Senate" merchandise.
12 Although Ritchie now claims that he never seriously intended to run for office and was merely
13 promoting his artistic persona and generating interest in his upcoming album, in July 2017, he
14 was by his own words seriously exploring a potential candidacy. By selling shirts, caps, and
15 yard signs that explicitly referred to him as a candidate, Ritchie's conduct appears to have been
16 at least partly for the purpose of influencing a federal election.

17 Ritchie's conduct thus fails to satisfy the Commission's four-factor test for bona fide
18 commercial activity, because when he, as the named candidate, distributed merchandise

³⁰ See Advisory Op. 2014-06 (Ryan); Advisory Op. 1994-30 (Conservative Concepts).

³¹ See Ritchie Resp., Ex. 1 ¶ 2 ("I have never seen the country as politically agitated as it is today. I wanted to reach that audience[.]"); *id.*, ¶ 8 ("The shirts and signs are just one way to draw attention to me, help advertise my concerts, and frankly to give my fans a new way to have a little fun.").

³² See 11 C.F.R. § 100.22 (defining express advocacy). Ritchie argues that "Kid Rock" is a fictional character and the slogan "Kid Rock for US Senate" therefore "fails to identify any actual person or individual who can run for office." Ritchie Resp. at 8. However, "Kid Rock" is Ritchie's stage name and the statement "Kid Rock for US Senate" expressly advocates for the election of the person publicly identifiable as Kid Rock, Robert Ritchie.

1 expressly advocating for his candidacy, that conduct was inconsistent with activity engaged in
2 "for genuinely commercial purposes."³³ The Commission has cautioned that the commercial
3 activity exemption may not apply where a candidate is involved in the commercial enterprise.
4 Advisory Opinion 1994-30 (Conservative Concepts) concerned a company selling merchandise
5 that contained express advocacy for profit. Because no candidate was involved in the venture
6 and none of the sale proceeds went to any political committee, the Commission determined that
7 the company was engaged in genuinely commercial activity, and that its conduct therefore did
8 not result in contributions or expenditures to any candidate or committee.³⁴ Crucially, however,
9 the Commission noted that the same activity might not be considered commercial, and could
10 result in the company making contributions or expenditures to a candidate, if it was coordinated
11 with that candidate.³⁵

12 When Ritchie directed WBR to produce "Kid Rock for US Senate" merchandise and
13 personally approved the designs for the items, he coordinated with WBR to sell merchandise
14 containing express advocacy messages supporting his candidacy. The available information
15 therefore indicates that all payments to produce and market the merchandise were at least partly
16 for the purpose of influencing a federal election and not for purely commercial purposes. As

³³ Advisory Op. 1994-30 at 4 (Conservative Concepts). The four factors used to evaluate when activity that might otherwise constitute a contribution or expenditure would be exempted as bona fide commercial activity are (1) whether the sales involve fundraising activity or solicitations for political contributions; (2) whether the activity is engaged in for genuinely commercial purposes; (3) whether the items are sold at the usual and normal charge; and (4) whether the purchases are made by individuals for their personal use in political expression. *Id.*

³⁴ Advisory Op. 1994-30 at 5-7.

³⁵ *Id.* at 8 ("[T]he Commission expressly notes that this conclusion is predicated on the representations that you have made that your activities are for purely commercial purpose and are *not coordinated* with any candidate.") (emphasis added); see First Gen. Counsel's Report at 15, MURs 5474 and 5539 (Dog Eat Dog) ("There is also no information that the production or release of the film was coordinated with any candidate or political committee[.]"); see also Advisory Op. 1976-50 (Friends of Dick Lugar).

1 such, those payments were expenditures under the Act, and Ritchie was required to register as a
2 candidate and report them once they exceeded the \$5,000 statutory threshold.

3 **3. Ritchie Made or Authorized Expenditures Most Likely in Excess of**
4 **the Statutory Threshold for Federal Candidacy**

5 Because the funds used to produce and sell "Kid Rock for US Senate" merchandise were
6 expenditures, and those expenditures most likely exceeded \$5,000 in the aggregate, the available
7 facts support a reasonable inference that Ritchie crossed the statutory threshold for candidate
8 status and was therefore required to register and report as a candidate. While the available
9 record does not indicate how much WBR spent to produce and market the merchandise expressly
10 advocating for Ritchie's election to federal office, the merchandise was offered for sale on or
11 about July 11, 2017, was still being sold when Ritchie announced that he would not run for
12 office on October 24, 2017, and continues to be offered on WBR's website. As such, there is
13 sufficient circumstantial evidence at this stage to infer that the amount spent to produce "Kid
14 Rock for US Senate" merchandise was in excess of the \$5,000 statutory threshold.

15 Because Ritchie made or authorized sufficient expenditures to become a candidate, it is
16 immaterial that he directed his share of the proceeds from "Kid Rock for US Senate"
17 merchandise sales to a 501(c)(4) nonprofit organization.³⁶ Ritchie requested that his share of the
18 sale proceeds be donated to support voter registration efforts, posted a statement to that effect on
19 his website, kidrockforsenate.com, and asked WBR to post a disclaimer to that effect on its

³⁶ See Ritchie Resp., Ex. 8 (WBR Merchandising Agreement) ("At your and Kid Rock's hereby irrevocably issued direction and authorization, [WBR] hereby agrees to issue to the order of/pay directly to the 501(c)(4) organization CRNC Action ("CRNC Action"), instead of to you or Kid Rock, all Merchandise Net Profits and any other moneys due to you or Kid Rock . . . that are derived from sales of Kid Rock for Senate Merchandise under the Merchandising Agreement occurring during the period July 1, 2017 through October 31, 2017."). After declaring that he would not run for the U.S. Senate, Ritchie asked that the merchandising agreement be amended so that future proceeds from the sale of "Kid Rock for US Senate" merchandise be remitted to him personally. WBR Resp. at 4.

1 website where the items were sold.³⁷ As such, potential purchasers were reasonably on notice
2 that sale proceeds would be used to support a social welfare cause and would not be used to
3 support Ritchie's potential campaign for federal office. Because purchasers' funds were
4 therefore not available for the purpose of influencing a federal election, they were not
5 "contributions" to Ritchie under the Act.³⁸

6 Nevertheless, as discussed above, the funds that Ritchie spent or authorized to produce
7 and sell materials containing express advocacy were sufficient to require him to register and
8 report as a federal candidate. Because Ritchie did not do so, the Commission finds reason to
9 believe that Ritchie violated 52 U.S.C. §§ 30102, 30103, 30104.

³⁷ Ritchie Resp. at 3-4; *id.*, Ex. 5; WBR Resp., Ex. A ¶ 19.

³⁸ The Complaint alleges that the full purchase price of all "Kid Rock for US Senate" merchandise is a contribution, relying on 11 C.F.R. § 100.53, *see* Compl. at 15, but that rule is inapposite here. The rule indicates that "the entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution." The items at issue in this matter clearly were not "sold by a political committee," and we can find no prior instance where this rule has been applied to items not sold by a political committee. In addition, the website where the items were offered specifically alerted potential purchasers that "all [sale] proceeds [will] go to voter registration efforts," Ritchie Resp. at 4, indicating that the items were not being sold to raise funds for any political committee or candidate, or as "an inducement" to make a political contribution. *See* Advisory Op. 1975-15 at 1 (Wallace) ("[W]hen the Campaign sells the described items, it is engaging in an activity to raise funds and to build support for the candidate. As a general matter, a person who transmits money to a political committee or candidate — any portion of which is available to be spent for the purpose of influencing a Federal election — has made a contribution in the full amount of the funds so transmitted. . . . The fact that the contributor obtains an item of intrinsic value does not remove the transaction from this definition of contribution. The items offered by the Campaigns are an inducement to the contributor to give money the same as a dinner or other social event held for the purpose of fundraising.").

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Warner Brothers Records, Inc.

MUR 7273

4
5 **I. INTRODUCTION**

6 This matter was generated by a complaint filed with the Federal Election Commission
7 ("Commission") by Common Cause and Paul S. Ryan. *See* 52 U.S.C. § 30109(a)(1). Robert J.
8 Ritchie, a recording artist known by his stage name, "Kid Rock," issued tweets and an online
9 public statement indicating that he was considering running for federal office, and created the
10 website "kidrockforsenate.com" which promoted merchandise bearing the logo, "Kid Rock for
11 US Senate," produced and sold by his merchandising company, Warner Brothers Records, Inc.
12 ("WBR"). Complainants allege that based on these actions, Ritchie became a federal candidate
13 and violated the law when he failed to abide by the relevant registration and reporting
14 requirements, contribution limits, and source prohibitions. Complainants further allege that
15 WBR made, facilitated, or acted as a conduit for contributions to Ritchie. WBR denies these
16 allegations. Because WBR appears to have been acting as a commercial vendor for Ritchie, the
17 Commission finds no reason to believe that WBR violated the law as alleged.

18 **II. FACTUAL AND LEGAL ANALYSIS**

19 **A. Background**

20 According to the Complaint, in February 2017, a member of the Michigan Republican
21 Party's central committee suggested that "Kid Rock" a/k/a Robert J. Ritchie, a Michigan native,
22 would generate a lot of excitement and might be a viable Republican Party candidate for the U.S.

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12 for office, Ritchie requested that his merchandising agreement be amended so that WBR would
13 remit his share of "Kid Rock for US Senate" merchandise sale proceeds to him.²²

14 **B. WBR Acted as a Commercial Vendor and Therefore Did Not Make,**
15 **Facilitate, or Serve as a Conduit For Any Contribution to Ritchie**

16 The available information supports the inference that WBR was acting as a commercial
17 vendor when it produced and sold "Kid Rock for US Senate" merchandise, and WBR therefore

¹⁶ WBR Resp. at 2-3; *id.*, Ex. A ¶ 14.

¹⁷ WBR Resp., Ex. A ¶¶ 13, 15.

¹⁸ WBR Resp., Ex. A ¶ 21.

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²¹ WBR Resp., Ex. A ¶ 20.

²² *Id.*, Ex. A ¶ 21.

1 did not make, facilitate, or act as a conduit for contributions to Ritchie. Under the Act, a
2 contribution includes "anything of value," which in turn includes all in-kind contributions, such
3 as "the provision of any goods or services without charge or at a charge that is less than the usual
4 and normal charge for such goods or services."²³ By implication, goods or services provided at
5 the usual and normal charge do not constitute "anything of value" under the Act.²⁴ Commission
6 regulations also provide that a corporation does not facilitate a contribution by providing goods
7 or services to a candidate or political committee in the ordinary course of its business as a
8 commercial vendor.²⁵ In addition, corporations cannot make contributions to candidates or serve
9 as conduits for earmarked contributions, which are contributions directed to a clearly identified
10 federal candidate through an intermediary.²⁶

11 Ritchie and WBR have a long-standing merchandising relationship, and Ritchie directed
12 WBR to produce and sell "Kid Rock for US Senate" merchandise, which WBR claims it did
13 under the terms of a standard merchandising agreement with one of its artists, at the usual and
14 normal rate for such services. Nothing in the available record suggests that WBR provided any
15 special discounts or terms for the "Kid Rock for US Senate" merchandise, and WBR specifically
16 denies that it provided any. In addition, because Ritchie requested that his share of the sale
17 proceeds be donated to support voter registration efforts, posted a statement to that effect on his

²³ 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8).

²⁴ *See* 11 C.F.R. § 100.52(d)(2) (defining "usual and normal charge" for goods as "the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution [and, for services,] the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.").

²⁵ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining "commercial vendor" as "any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services"); *see also* Advisory Op. 2007-04 at 3 (Atlant, Inc.).

²⁶ 11 C.F.R. § 110.6(a), (b); *see* 52 U.S.C. § 30118(a).

1 website, kidrockforsenate.com, and asked WBR to post a disclaimer to that effect on its website
2 where the items were sold,²⁷ potential purchasers were reasonably on notice that sale proceeds
3 would be used to support a social welfare cause and would not be used to support Ritchie's
4 potential campaign for federal office. Because purchasers' funds were therefore not being given
5 for the purpose of influencing a federal election, they were not "contributions" to Ritchie under
6 the Act, and WBR therefore could not have facilitated contributions to Ritchie by offering the
7 merchandise for sale.²⁸

8 The available information also provides no support for the allegation that WBR received
9 or transmitted any contributions earmarked for Ritchie. As such, there is insufficient factual
10 support for the allegation that WBR made, facilitated, or served as a conduit for any
11 contributions to Ritchie. The Commission therefore finds no reason to believe WBR violated
12 52 U.S.C. § 30118(a) and 11 C.F.R. §§ 110.6, 114.2(f).

²⁷ Ritchie Resp. at 3-4; *id.*, Ex. 5; WBR Resp., Ex. A ¶ 19.

²⁸ The Complaint alleges that the full purchase price of all "Kid Rock for US Senate" merchandise is a contribution, relying on 11 C.F.R. § 100.53, *see* Compl. at 15, but that rule is inapposite here. The rule indicates that "the entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution." The items at issue in this matter clearly were not "sold by a political committee," and in no prior instance has this rule been applied to items not sold by a political committee. In addition, the website where the items were offered specifically alerted potential purchasers that "all [sale] proceeds [will] go to voter registration efforts," Ritchie Resp. at 4, indicating that the items were not being sold to raise funds for any political committee or candidate, or as "an inducement" to make a political contribution. *See* Advisory Op. 1975-15 at 1 (Wallace) ("[W]hen the Campaign sells the described items, it is engaging in an activity to raise funds and to build support for the candidate. As a general matter, a person who transmits money to a political committee or candidate — any portion of which is available to be spent for the purpose of influencing a Federal election — has made a contribution in the full amount of the funds so transmitted. . . . The fact that the contributor obtains an item of intrinsic value does not remove the transaction from this definition of contribution. The items offered by the Campaigns are an inducement to the contributor to give money the same as a dinner or other social event held for the purpose of fundraising.").